

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

GILBERT MEDICAL BUILDING LLC,

Plaintiff,

v.

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA, NICHOLAS
LEE BEST, and THE INSURANCE
CENTER AGENCY INC.,

Defendants.

Case No. CIV-20-896-R

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Travelers Casualty Company of America (“Travelers”) hereby respectfully submits this Notice of Removal of the above-styled action from the District Court of Oklahoma County, Oklahoma to this Court, and in support thereof shows the Court the following:

1. On July 30, 2020, Plaintiff Gilbert Medical Building LLC (“Plaintiff”), filed its original Petition in the District Court of Oklahoma County, Oklahoma against the Defendants, Travelers Casualty Insurance Company of America (“Travelers”), Nicholas Lee Best (“Travelers’ Adjuster”), and The Insurance Center Agency Inc. (“Travelers’ Agent”) (collectively, “Defendants”) in case number CJ-2020-3532. Plaintiff served Travelers with service of process on the Oklahoma Insurance Department on August 17, 2020.

2. Plaintiff's Petition contains, *inter alia*, allegations (1) that Travelers breached its insurance contract with the Plaintiff, (2) that Travelers and Travelers' Adjuster breached the insurance contract in "bad faith," (3) that the Defendants breached fiduciary duties owed to the Plaintiff, (4) that Travelers' Agent was negligent in the procurement of insurance for the Plaintiff, (5) that Travelers' Agent was guilty of "constructive fraud" and "negligent misrepresentation" in dealing with the Plaintiff, (6) that the Defendants violated the Oklahoma Consumer Protection Act ("OCPA") in their dealings with the Plaintiff, and (7) that the Defendants breached the "common law duty of good faith and fair dealing" to the Plaintiff.

3. Defendant hereby serves Notice of Removal of this action pursuant to 28 U.S.C. § 1446(b).

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because Plaintiff and Travelers are citizens of different states, Oklahoma and Connecticut, respectively.

5. Diversity jurisdiction is present under 28 U.S.C. § 1332 because Plaintiff seeks damages in excess of the jurisdictional requirement of \$75,000 pursuant to an estimate of \$885,729.71 provided pre-litigation to Travelers. This estimate constitutes an "other paper" pursuant to 28 U.S.C. § 1446. (See Exhibit 1)

6. As more fully described below, the Plaintiff joined an Adjuster who is not a Travelers employee and an insurance agency solely to defeat diversity jurisdiction and, therefore, this Court may disregard their citizenship under the doctrine of "fraudulent joinder."

In the alternative, the claims against the agent, and agency co-defendants should be severed pursuant to Fed.R.Civ.P. 21.

7. An adjuster can have no liability under Oklahoma law on any of the Plaintiff's claims. *See generally, Trinity Baptist Church v. Brotherhood Mut. Ins. Serv., LLC*, 2014 OK 106, 341 P.3d 75 (independent insurance adjuster has no special relationship with, and can have no legal duty to, an insured); and *Wallace v. Allstate Ins. Co.*, Case No. CIV-12-310-HE, 2012WL2060664 *2 (W.D.Okla.) (Heaton, J., unpublished) ("... independent insurance adjuster cannot be sued [by an insured] for mere negligence.").

8. Based on the conclusory allegations in the Plaintiff's Petition, the Adjuster and Insurance Agency can have no liability on any of the Plaintiff's claims. *See e.g., St. Paul Reinsurance Co., Ltd. v. Club Services Corp.*, 30 Fed.Appx. 834, 2002WL203343 *1-2 (10th Cir.) (unpublished), quoting *Timmons v. Royal Globe Ins. Co.*, 1982 OK 97 ¶17, 653 P.2d 907, 912-13, quoting *Gruenberg v. Aetna Ins. Co.*, 510 P.2d 1032 (1973) ("Obviously, the non insurer defendants were not parties to the agreement for insurance; therefore, they are not, as such, subject to an implied duty of good faith and fair dealing"); *Pratt v. Safeco Ins. Co. of Amer.*, 2020WL4735350 *2 (W.D.Okla.) (DeGiusti, J., unpublished) (granting defendant's motion for partial dismissal under Fed. R. Civ. P. 12(b)(6) on claims of fraud and breach of fiduciary duty against insurance agent); *Woodward v. New York Life Ins. Co.*, 2008WL11337956 *2 (W.D.Okla.) (Heaton, J., unpublished) ("..., Oklahoma law generally does not recognize a claim for breach of the duty of good faith and fair dealing brought against an insurance agent." Citations omitted); and *Country Gold, Inc. v. State Auto Prop.*

and Cas. Ins. Co., 2015WL431638 (W.D.Okla.) (DeGiusti, J., unpublished) (granting defendant's motion for partial dismissal under Fed. R. Civ. P. 12(b)(6) of claims of "Breach of Fiduciary Duty," "Negligence," "Constructive Fraud and Negligent Misrepresentation," and "Oklahoma Consumer Protection Act.").

9. Venue is proper in the United States District Court for the Western District of Oklahoma because the Plaintiff and Oklahoma County District Court are located within the Western District of Oklahoma. 28 U.S.C. § 1441(a).

9. A copy of the docket sheet, all process, pleadings, papers, and orders served in the State Court action are attached to this Notice of Removal as Exhibits as required by 28 U.S.C. § 1446.

10. Defendants will file a copy of this Notice of Removal with the District Court for Oklahoma County, as required by 28 U.S.C. § 1446(d).

11. Defendant The Insurance Center Agency, Inc. consents to this removal and co-defendant Best has not been served.

WHEREFORE, Defendant hereby removes the above captioned action now pending in the District Court of Oklahoma County, Oklahoma to this Court.

DATED this 4th day of September, 2020.

Respectfully submitted,

**TAYLOR, FOSTER, MALLETT, DOWNS,
RAMSEY & RUSSELL**

s/Darrell W. Downs

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September, 2020, I electronically transmitted the attached document to the Clerk of Court using the ECF system for filing. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to those registered participants of the ECF System.

S. Alex Yaffe
Tom Cooper

s/Darrell W. Downs